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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6488/2018

MS. MADHU

..... Petitioner

Through Mr. Manohar Lal, Advocate.

versus

THE DIRECTOR DEPARTMENT OF EDUCATION AND ANR.

..... Respondents

Through Mr. V. Balaji, Panel Counsel for
DoE/R-1.

Mr. Naresh Khanna, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **28.01.2020**

By the instant petition, the petitioner, in effect, seeks issuance of a Writ of Mandamus for grant of promotion to the post of PGT (English) with the respondent no.2 school w.e.f. 01.11.2003 instead of w.e.f. 30.08.2006.

Concisely, the case of the petitioner is that she was initially appointed as TGT (English) with the respondent no.2 school on 02.11.1997. She acquired the higher qualification of M.A. (English) later. The petitioner pleads that on her having acquired the requisite qualification for being considered to the post of PGT (English), she had become entitled to be promoted to the post of PGT (English), when Ms. Usha Ohri (PGT-English) retired on 31.10.2003. It is her case that she had furnished her credentials of qualifications but the respondents neither considered her for promotion nor

convened DPC for almost 26 months. Later, on the representations made by her, she was granted promotion w.e.f. 30.08.2006.

According to the respondent no.2 school, the petitioner did not furnish the requisite testimonials on acquiring the requisite qualification for promotion but for submitting a provisional certificate of post graduation in May, 2004 and therefore, her candidature could not be considered earlier and, when the matter was taken up in DPC in December, 2005, she was duly considered for the post and selected.

What is the basis to fix the promotion of the petitioner w.e.f. 30.08.2006 as was conveyed to her by the Director of Education vide communication No.DDE/C/ND/2007/558 dated 12.07.2007, which forms part of the petition as Annexure 'P2', there is however no explanation. The counter-affidavit of the respondent no.1 is equally silent.

In the submissions of the ld. counsel for the petitioner, the petitioner had acquired the requisite qualification to be eligible to the only post of PGT (English) before the retirement of Ms.Usha Ohri and therefore, any delay in holding the DPC by the respondents could not be operated detrimental to the interest of the petitioner. In the submissions of ld. counsel for the petitioner, in the absence of any just explanation for the delay in holding the DPC, the right, which had accrued in favour of the petitioner for being promoted to the given post, could not be denied. In support of such submissions, reliance is placed upon '**Dr. Sahadeva Singh vs. UOI and Ors.**' MANU/DE/0655/2012 and the other order dated 13.02.2009 passed by the ld. Single Judge of this Court in W.P.(C) 3989/2008.

Mr. Khanna, ld. counsel for respondent no.2 on his part strenuously contends that the promotion to the post has to be from the date it is granted

and not from the date the post fell vacant and therefore, no error could be found with the decision taken to grant promotion to the petitioner w.e.f. 30.08.2006. In support of such submission, reliance is placed on '**Union of India and others vs. K.K. Vadera and others**' AIR 1990 Supreme Court 442 and '**State of Uttaranchal and another vs. Dinesh Kumar Sharma**' (2007) 1 SCC 683.

Having given thoughtful consideration to the respective contentions of the parties, it is observed that the factum of the petitioner having acquired the requisite qualification for being entitled for the promotion to the post of PGT as on 01.11.2003 does not get clear. Suffice to say, there is nothing on record to show that prior to 01.11.2013 the petitioner had acquired the qualifications for being eligible to the given post and furnished the certificates of her qualifications with the respondent. The assertion made in the counter-affidavit of the respondent no.2 categorically states for a provisional certificate of post graduation having been furnished by the petitioner in May, 2004 only. If that be so, it would not, in any event, lie in the mouth of the petitioner to say that she was entitled to promotion w.e.f. 01.11.2003 itself. Mr. Khanna, ld. counsel for the respondent on his part also contends that in May, 2004 there was no vacant post at that point of time and that the petitioner was considered for promotion on the vacancy occurring, when another teacher, who was deputed meantime, retired in June, 2005. Though, Mr. Khanna, ld. counsel for the respondent school also submits that the provisional certificate of post graduation of the petitioner was not sufficient to consider her for the post of PGT, the fact that the petitioner was considered and granted promotion w.e.f. 30.08.2006 by itself implies that the higher qualification acquired by the petitioner to be entitled

to the given post of PGT (English) was not in challenge and therefore, his such contention is unmerited. Moreso, when the veracity of the provisional certificate is not disputed. As for the contention of Mr. Khanna that another teacher had come to be engaged for the subject post and that she retired only in June, 2005, it would be a matter of fact to be gone into. This court is not inclined to get into any unestablished or disputed questions of facts. Fact remains, in the event, the post had fallen vacant and the petitioner was entitled to promotion thereon, why, the delay, if any, in holding the DPC, be detrimental to the interest of the petitioner. These factual aspects require to be gone into by the respondent no.1, in the first instance.

For the foregoing reasons, the writ petition is disposed of with the direction to the respondent no.1–Director of Education to treat the instant petition as a representation of the petitioner and proceed to dispose it off with a speaking order having afforded an opportunity of hearing to the petitioner in the light of the observations made by this Court and in accordance with law, taking note of the ratio of the judgments relied upon by the respective parties, within 8 weeks from today. The decision taken shall be communicated to the petitioner immediately and the petitioner would be at liberty to approach the Court afresh, if, a cause of action survives.

A. K. CHAWLA, J

JANUARY 28, 2020

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